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April 9, 2003

The Honorable Ann Veneman  
Secretary, U.S. Department of Agriculture  
Country of Origin Labeling Program  
Agricultural Marketing Service  
Stop 0249 Room 2092-S  
1400 Independence Avenue, SW  
Washington, DC 20250-0249

#### Re: **Comments on Guidelines for Voluntary Country of Origin Labeling Program**

Dear Secretary Veneman:

On behalf of Gulf Coast Retailers Association, we are pleased to respond to your request for comments on the U.S. Department of Agriculture's (USDA's) "Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts" (hereinafter Voluntary COL Guidelines).

As food retailers, the law charges our members with the substantial responsibility of informing consumers of the country of origin of all non-processed beef, pork, lamb, fresh and frozen fruits and vegetables, fresh and frozen seafood (for which we must also identify the method of production), and peanuts that are sold in our retail stores. The country of origin declaration as defined by the law extends back to the farm or ranch on which the product originated. Therefore, we must depend on information that is known only to our suppliers in order to fulfill our obligations under the law and to our customers. Accordingly, we urge USDA to propose regulations quickly that will ensure that all suppliers that impact the country of origin determination – starting at the farm or ranch at which the product originates – are held responsible for giving retailers complete, accurate and verifiable information. These and our other recommendations are explained more fully below.

Our members have had a long history of supporting voluntary country of origin labeling programs.

As you develop regulations, we urge you to address the matters indicated below.

- **Suppliers Must Be Held Accountable for Providing Retailers with Accurate and Verifiable Country of Origin Information**

The law requires retailers to provide consumers with information that retailers can only obtain from their suppliers. Given this fact, the law also holds suppliers accountable for providing information to retailers.

USDA's Voluntary COL Guidelines properly recognize that the entire food chain must bear responsibility for a country of origin labeling program if consumers are to receive accurate country of origin information as Congress defined it. In furtherance of this principle, the Voluntary COL Guidelines state that producers, growers, handlers, packers, processors and importers must maintain auditable records documenting the origin of covered commodities and that these persons must make country of origin information available to retailers. USDA's regulations must also recognize the obligations that these parties share and must further hold them accountable through stringent enforcement measures to ensure that retailers have accurate information to provide to consumers.

- **Retain Flexible Methods of Country of Origin Notification**

The statute allows country of origin information to be provided by means of a "label, stamp, mark, placard or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers." The Guidelines generally follow the statute and further provide that the information must be "conspicuous," and either typed, printed or handwritten.

We urge the Secretary to maintain flexibility in the methods of notification. Furthermore, USDA should expressly recognize that country of origin information can be considered "conspicuous" even if it is a label placed on the back of a random weight package. The country of origin declaration for hamburger as explained in the Voluntary COL Guidelines could cover a substantial amount of the product if it was required to appear on the front of the package with all of the other federally mandated labeling. (Some counties limit the amount of package surface that may be covered to avoid concealing products from consumers.) Accordingly, provided that the information is presented to consumers in a manner in which they can readily find it, the information should be considered conspicuous and our obligation met. Indeed, since the statute can be satisfied by providing a sign at the store, to the extent that the information is affixed anywhere on the package, it will be available to the consumer for a greater period of time.

- **Do Not Require Retailers To Keep Country of Origin Records for Two Years in Every Retail Store**

The Voluntary COL Guidelines require every person engaged in the business of supplying a covered commodity for retail sale to keep records on the country of origin of the covered commodity for two years. Basic records must be kept at store level; contracts and other more detailed records may be kept at warehouses or corporate headquarters.

Retailers should not be required to keep two years worth of records for covered commodities at store level. Most covered commodities will be sold and consumed well before two years has elapsed, thus retaining records for this period of time at the retail level will serve no useful purpose while incurring substantial cost.

Records required should be reasonable. Retailers have no control over the country of origin determination, which must be made well before the food product reaches the retail grocer's control. Accordingly, the records retailers are required to keep must only connect the covered commodity to those who made the country of origin determination.

USDA should continue to allow records to be kept in hard format or electronic version.

- **Exempt Food Service Areas of Grocery Stores**

In keeping with the current state of the industry, our member stores include a variety of options for satisfying consumer demands. In addition to the customary grocery sections, such as produce, meat and general grocery, some of our member stores offers consumers prepared foods at delis, salad bars, through catering, and other venues.

The statute exempts food service establishments from the country of origin labeling program. The Guidelines state that the term "food service establishment" includes salad bars, delis and other prepared food enterprises that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises. We urge USDA to continue to recognize that foods provided from these venues within the retail store are properly considered subject to the statute's exemption from country of origin labeling for food service establishments. Trays of cut vegetables from our catering operations, fruit salad sold at delis or throughout the store, and foods provided at our salad bars are all prepared at food service.

- **Recognize Customer Receipt as "Final Point of Sale" for Internet Transactions *[may not be appropriate for all retail commenters]***

The statute requires retailers to provide consumers with country of origin information on covered commodities at the final point of retail sale. In the Voluntary COL Guidelines, USDA interprets this to require the retailer to provide country of origin information on the sale vehicle, such as the internet site. The basis for this is the "Agency's belief that consumers must be made aware of the country of origin of the covered commodity before the purchase is made."

This approach is not required by law and would literally require us to overhaul our entire electronic food delivery system. Specifically, we fulfill consumers internet orders by having “shoppers” at our individual retail grocery stores select the items that were ordered electronically by the consumer. Different retail stores will have covered commodities with different country of origin declarations. For example, we may have strawberries from four different countries at our warehouse that will be distributed to several hundred different stores. The scenario could be repeated for bananas, grapes, tomatoes and most of the other perishable produce that we offer to consumers, not to mention the meat and seafood products. Even if we told consumers what all of the possible options for each covered commodity were based on what was available through our distribution center at any one time – a situation that changes on a daily basis – and allowed the consumer to choose covered commodities with a particular country of origin, the choices would not reflect what was at the individual stores that would be shopped for the individual consumer.

Accordingly, for purposes of remote sales, retailers should be allowed to satisfy their obligation to inform consumers of the country of origin of covered commodities by providing information to the consumer at the time the food is delivered to the consumer.

- **Enforcement**

Retailers are subject to penalties of up to \$10,000 per “willful” violation of the statute. USDA’s regulations should recognize this standard in two important respects.

- **Stickers on Majority of Items Is Sufficient To Inform Consumers**

USDA should recognize that if the majority of individual covered commodity items bear a label indicating the product’s country of origin, the retailer has met the statute’s requirement to inform the consumer of the country of origin of that covered commodity. For example, one efficient way to ensure that consumers receive accurate country of origin information on some covered commodities, such as produce, is for suppliers to sticker the individual items with country of origin information. However, given the nature of some items as well as adhesive efficacy, not all covered commodities will be stickered.

For example, suppliers currently apply one or two stickers to a hand of bananas that may be comprised of six or seven individual bananas. Consumers frequently separate individual bananas from the “hands” in which they were shipped so that not all hands will be labeled throughout the display, even if the supplier labeled each hand before shipment. Similarly, although the technology for label adhesives has improved, no label adhesive is effective 100% of the time. Therefore, USDA should recognize that, if the majority of covered commodity items on display bear country of origin labels, the retailer has met its obligation to inform the consumer of the country of origin of the covered commodity and has not willfully violated the statute, even if some covered commodities in the display do not bear a label.

○ **Results of USDA Audit of Supplier Country of Origin Program Is Evidence That Retailer Has Not Willfully Violated Statute**

USDA should expressly recognize in the regulations and the preamble some circumstances under which retailers will not be considered to have violated the statute willfully. For example, USDA should state that the Agency will not conclude that a retailer has willfully violated the statute for providing inaccurate country of origin information for a covered commodity if the retailer has the results of an audit that the covered commodity supplier obtained from USDA (under the voluntary, user fee-based program proposed in the Voluntary COL Guidelines) or another third party that demonstrates that the supplier has a system for determining country of origin upon which the retailer may reasonably rely. USDA should retain the voluntary user-fee-based audit system in the final regulations.

• **Issue Regulations Quickly**

Finally, we urge you to conduct the rulemaking promptly and efficiently. Section 285 of the statute states that the provision "shall apply to the retail sale of a covered commodity beginning September 30, 2004." Since we are required to set up significant systems to obtain the necessary information from our suppliers, to provide the information to consumers, and then to retain the information, we must know what those systems must accommodate as quickly as possible.

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We appreciate your attention to our concerns and urge you to develop the regulations using the foregoing recommendations as expeditiously as possible.

Sincerely,



Joe Williams  
President

Gulf Coast Retailers Association